

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

JUAN JOSE VALDOVINOS,

Defendant.

NO. CR-02-0084-RHW
CV-07-0189-RHW

**ORDER DISMISSING
DEFENDANT'S MOTION FOR
TIME REDUCTION BY AN
INMATE IN FEDERAL
CUSTODY UNDER 28 U.S.C. §
2255**

Before the Court is Defendant Juan Jose Valdovinos's Motion for Time Reduction by an Inmate in Federal Custody under 28 U.S.C. § 2255 (Ct. Rec. 39).

Defendant plead guilty to Conspiracy to Manufacture and Distribute over 50 Grams of Methamphetamine in violation of 21 U.S.C. § 841(a)(1). On November 22, 2002, the Court sentenced him to 135 months in prison, 5 years supervised release, and a \$100 criminal monetary penalty. Defendant did not appeal his conviction or sentence.

Pursuant to Rule 4 of the Rules Governing Section 2255 Proceedings for the United States District Courts ("Rule 4") the Court must independently examine a Section 2255 motion to determine whether summary dismissal is warranted. Dismissal is appropriate if the movant's "allegations, viewed against the record, either fail to state a claim for relief or are so palpably incredible or patently frivolous as to warrant summary dismissal." *Marrow v. United States*, 772 F.2d 525, 526 (9th Cir. 1985); *see also United States v. Leonti*, 326 F.3d 1111, 1116

1 (9th Cir. 2003).

2 On November 6, 2007, the Court entered an Order to Show Cause Why
3 Summary Dismissal is Not Appropriate (Ct. Rec. 41). On December 13, 2007,
4 Defendant filed his response. Defendant asserts that his lack of constructive
5 knowledge of the filing requirement and the reasonableness in remaining ignorant
6 of the legal requirement for failing to file his claim are exceptional and
7 extraordinary circumstances that would justify equitably tolling the one-year
8 statute of limitation of the Anti-Terrorism and Effective Death Penalty Act.

9 The Court finds that Defendant has not met his burden of showing that the
10 statute of limitations should be equitably tolled.

11 Accordingly, **IT IS HEREBY ORDERED:**

12 1. Defendant's Motion for Time Reduction by an Inmate in Federal Custody
13 under 28 U.S.C. § 2255 (Ct. Rec. 39) is **DISMISSED**.

14 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
15 Order and provide a copy to the Defendant.

16 **DATED** this 28th day of March, 2008.

17
18 *s/Robert H. Whaley*

19 ROBERT H. WHALEY
20 Chief United States District Judge

21
22 Q:\CRIMINAL\2002\dismiss.wpd
23
24
25
26
27
28